

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

~~~~~  
KYLE PARTLOW,

Plaintiff,

vs

6:08-CV-1046

THE CITY OF GLOVERSVILLE; and  
THE GLOVERSVILLE FIRE DEPARTMENT,

Defendants.  
~~~~~

APPEARANCES:

OF COUNSEL:

TULLY RINCKEY, PLLC
Attorneys for Plaintiff
441 New Karner Road
Albany, NY 12205

GREG T. RINCKEY, ESQ.
KILEY D. SCOTT, ESQ.
DOUGLAS J. ROSE

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP
Attorneys for Defendants
9th Floor
677 Broadway
Albany, NY 12207-2996

THOMAS M. WITZ, ESQ.

GOLDBERGER AND KREMER
Attorneys for Defendants
Suite 201
39 North Pearl Street
Albany, NY 12207

BRYAN J. GOLDBERGER, ESQ.

DAVID N. HURD
United States District Judge

ORDER

Plaintiff sued the defendants pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), 38 U.S.C. § 4301 et seq. Defendants

move for summary judgment pursuant to Fed. R. Civ. P. 56. (Docket No. 28). Plaintiff opposes. (Docket No. 33). Defendants have replied. (Docket No. 35).

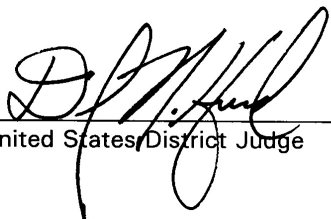
Viewing the facts most favorable to the nonmoving plaintiff as, of course, must be done in a Rule 56 motion, he has clearly set forth direct and circumstantial evidence which creates material questions of fact for a jury. The issues include whether plaintiff was denied benefits of employment, promotion, and if he was subjected to a hostile work environment because of his military status. Questions of fact also exist as to whether the defendants had a policy in place to protect against violations of USERRA, and if so, whether plaintiff failed to utilize said policy.

Therefore, it is

ORDERED, that defendants' motion for summary judgment is DENIED.

IT IS SO ORDERED.

Dated: October 13, 2010
Utica, New York.



United States District Judge